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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.6409 OF 1997

Head Master
Kalsulkar English School & Anr. ... Petitioners
V/s.
Smt.Kalpana Sanjay Chaugule & Anr. ... Respondents

Mr.G.J. Sabnis for Petitioners
Mr.S.S. Pakale for Respondent No.1

CORAM: **SMT.NISHITA MHATRE, J.**
JUDGMENT RESERVED ON: **AUGUST 2, 2007**
JUDGMENT PRONOUNCED ON: **AUGUST 30, 2007**

JUDGMENT:

. The petitioners have challenged the order of the School Tribunal dated 26.9.1997. By this order, the School Tribunal has held that the notice of termination of service dated 30.3.1996 was illegal, ineffective and void ab initio. The petitioners have been directed to reinstate Respondent No.1 to her original post and to pay her backwages, including all allowances, till her reinstatement.

3. The petitioners had appointed Respondent No.1 on a clock-hourly basis on 5.8.1993. She worked for 9 months on this basis and was paid remuneration in accordance with law. It is the case of the petitioners that for the next academic year i.e., 1994-95, one Nitin Deshpande was appointed instead of Respondent No.1. On 1.7.1995, the petitioners appointed Respondent No.1 in a reserved post, temporarily for one year, subject to the approval of the education officer. The petitioners had

appointed Respondent No.1 pursuant to the advertisement issued by them in accordance with the directions of the education department. The services of Respondent No.1 were terminated w.e.f. 2.5.1996 by a letter of 30.3.1996. The petitioners thereafter advertised the post again for a candidate from the reserved category and Respondent No.1 applied for the post. After interviews were held, the petitioners appointed one Smt.Sandikar, who according to them, was better qualified than Respondent No.1 to teach English.

4. Respondent No.1 after learning of the appointment of Smt.Sandikar, who was a candidate from the general category filed an appeal on 30.7.1996 before the School Tribunal, Kolhapur. The Tribunal allowed the appeal by concluding that Respondent No.1 had worked in the school for more than two years and, therefore, she was deemed to be a permanent employee. The Tribunal held that Respondent No.1 who was from the general category had been appointed on a post reserved for a candidate from the backward classes. In the year 1996-97, therefore, the petitioners ought to have continued the services of Respondent No.1 rather than appointing somebody else from the open category of candidates in place of Respondent No.1. The Tribunal has also held that the petitioners had discontinued the services of Respondent No.1 malafide although she had

rendered service on clock hour basis for the year 1993-94 and thereafter in 1995-96 she had been employed as a temporary employee. The Tribunal therefore concluded that Respondent No.1 was deemed to be permanent in service, having completed two years in a permanent vacancy.

5. The learned advocate appearing for the petitioner criticises the judgment of the School Tribunal by submitting that the Tribunal has wrongly concluded that Respondent No.1 was in service for a period of two years. He submits that initially she was appointed on a clock hour basis and, therefore, that period of her employment could not be treated as continuous with her employment for the year 1995-96. According to him, unless the employee is appointed to a permanent clear vacancy for two years, there is no question of treating such an employee as a deemed permanent employee u/s 5(2) of the MEPS Act. He then submits that Respondent No.1 had been informed categorically that she was appointed to the post on a temporary basis for the year 1995-96 subject to the approval from the Education Officer. The education officer not having approved of her appointment, according to the learned advocate, the petitioners had no option but to terminate the services of Respondent No.1. He relies on the judgment of the Supreme Court in

the case of *Hindustan Education Society v/s. Sk.Kaleem Sk.Gulam Nabi*, **AIR 1997 SC 2126.**

6. Per contra, the learned advocate for the respondent submits that Respondent No.1 was entitled to continue in service beyond the academic year 1995-96 as there was no suitable candidate available from the reserved category. According to the learned advocate, appointment of another candidate from the open category instead of the petitioner was illegal. He submits that there was no document on record produced by the petitioners to fortify their contention that the petitioner was appointed against a reserved category post. Apart from this, it is submitted that the only reason given for the termination of service is that the Education officer had not accorded approval to the appointment of Respondent No.1. This according to the learned advocate is a reason which cannot be accepted for terminating the services of Respondent No.1 in view of several judgments of this Court and the settled position of law as expounded by the Full Bench of this Court in *St.Ulai High School & Anr. v/s. Devendraprasad Jagannath Singh,* **2007(1) Mh.L.J. 597.** The learned advocate points out that the approval of the education officer is necessary only for the purposes of securing grant in aid and the service tenure of an employee cannot be determined on the basis of such

approval being granted or denied. It is further submitted that in view of the judgment in the case of *President, Mahila Mandal Sinnar, Nashik & Anr. v/s. Sunita Bansidhar Patole*, **2007 I CLR 496,** the petitioner was entitled to continue in the post.

7. A perusal of the documents on record indicates that the findings of the School Tribunal that the petitioner had appointed and continued Respondent No.1 in service for two years is incorrect. Initially, Respondent No.1 was working on a clock hour basis i.e., in the year 1994-95. It was only in the year 1995-96 that she was as a temporary teacher against a reserved post. Thus, in my view, the finding of the Tribunal is incorrect. The Tribunal has misdirected itself by concluding that Respondent No.1 was a deemed permanent employee since she was on probation for two years and had completed the period of probation satisfactorily. The basic premise of the Tribunal that Respondent No.1 was in service for two years is incorrect. Therefore, its conclusion that Respondent No.1 was a deemed permanent employee u/s 5(2) of the MEPS Act is also contrary to the evidence on record.

8. The Full Bench in the case of *St. Ulai High School & Anr. (supra)* has held that the tenure of an employee's services does not depend on approval being

granted to the appointment of that person to a particular post. However, in the present case, there is no doubt that the Respondent was appointed against the reserved category. The post was advertised again for the academic year 1996-97 and somebody else who was better qualified, according to the petitioners, was appointed. The Respondent had also applied for the post in 1996-97 and it was found that she was not suitably qualified. The judgment of the Full bench would not aid the respondent in any manner. Had the Respondent No.1 been appointed in a clear permanent vacancy and approval had not been accorded for her appointment, the school would not have had the right to terminate her services on account of approval not being granted. But in the present case, Respondent No.1 was appointed against the reserved category post which is required to be advertised every year till a suitable backward class candidate is selected. In view of the fact that the vacancy against which Respondent No.1 was appointed was not a permanent clear vacancy, she would have no right to be continued in the post beyond the limited period for which she was appointed.

9. The submission of the learned Advocate for Respondent No.1 that an adhoc employee should not be appointed in place of another adhoc employee is again of no avail since Respondent No.1 had appeared for the

interview and it was found that Smt.Sandikar was found more suitable than her.

10. In such circumstances, the petition succeeds. The impugned order of the Tribunal is set aside. No order as to costs.